Supreme Court, U.S.
FILED

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No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1996

CHARLES P. WILEY
- PETITIONER

v.

GENERAL MOTORS CORPORATION
- RESPONDENT

On Petition for Writ of Certiorari
To the United States Court of Appeals, Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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Questions Presented for Review

1. Whether the Courts below erred in their application of *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986) and *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159, 90 S.Ct. 1598, 1609, 26 L.Ed.2d 142 (1970) in granting summary judgment to the defendant in a products liability case where the plaintiff and his physician testified that he was injured when his seat belt disengaged and the defendant's discovery responses established that the seat belt which disengage causing injury to plaintiff was subject to a recall for "sensitive latch disengagement" and "intermittent ability of the buckle to latch".

2. Whether the Courts below erred in ruling the plaintiff was required to have expert testimony to establish a product liability claim when the reasonable inferences to be drawn from the evidence submitted in support of and opposition to the motion for summary judgment, including defendant's experts, established the existence of the defect and its relationship to plaintiff's injures.

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Citation to Opinions Below

The opinions below are not published. However, the internal citation to the opinions are as follows:

District Court	No. CA 94-98
Court of Appeals	No. 96-30065

Basis of Jurisdiction

A final judgment was entered in this matter by the United States Court of Appeals for the Fifth Circuit on October 9, 1996. That judgment followed the timely appeal of the District Court's grant of summary judgment in favor of the defendant-respondent. Accordingly this Court is vested with jurisdiction pursuant to 28 U.S.C. § 1254.

The notification requirements of Rule 29.4(b) and (c) are not applicable to this case.

Statutes Involved in Case

Federal Rules of Civil Procedure, Rule 56

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment,

interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated

therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the

affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Louisiana Product Liability Act, La. R. S. 9:2800.54

A. The manufacturer of a product shall be liable to a claimant for damage proximately caused by a characteristic of the product that renders the product unreasonably dangerous when such damage arose from a reasonably anticipated use of the product by the claimant or another person or entity.

B. A product is unreasonably dangerous if and only if:

(1) The product is unreasonably dangerous in construction or composition as provided in R.S. 9:2800.55;

(2) The product is unreasonably dangerous in design as provided in R.S. 9:2800.56;

(3) The product is unreasonably dangerous because an adequate warning about the product has not been

Statement of the Case

A. Procedural History

Petitioner, Charles P. Wiley, filed suit in Louisiana state court on December 22, 1993 against General Motors, Inc., alleging injuries caused when his seat belt failed as the result of a defect in manufacturing, or design, or due to a failure to warn, under the Louisiana Products Liability Act, La. R.S. 9:2800.51 *et seq*. On January 12, 1994, General Motors removed the case to federal court for the Middle District of Louisiana relying upon diversity jurisdiction. This removal was proper under the provisions of 28 U.S.C. §§ 1332 and 1441. Thereafter, General Motors filed a motion for summary judgment on October 17, 1994. The District Court, Judge Frank Polozola, presiding, ruled on November 10, 1994, granting defendant's motion. Judgment was entered on November 18, 1994. Mr. Wiley filed a motion for reconsideration on November 23, 1994. Because plaintiff's motion was filed within ten days of the judgment, the District Court treated the motion as a motion for new trial. On December 22, 1995, the District Court ruled, denying plaintiff's motion. An appeal was perfected to the United States Court of Appeals for the Fifth Circuit on January 19, 1996. On October 9, 1996, that Court rendered the judgment sought to be reviewed herein,

sustaining the District Court ruling on summary judgment.

B. Facts

Mr. Charles P. Wiley was driving his aunt's 1990 Camaro on December 19,1992. His seat belt had been properly fastened. Due to weather and roadway conditions, he lost control of the vehicle which impacted in a ditch or gully. At some point during the accident, he felt his seat belt come unlatched. Upon impact with a ditch embankment, Mr. Wiley was thrown into the passenger seat, hitting his knee under the dashboard, thereby causing him injury. Sometime after the accident, his aunt received a recall notice on the vehicle's seat belts. The recall was for "sensitive latch disengagement" and/or "intermittent ability of the buckle to latch". Thereafter, Mr. Wiley took the vehicle to Supreme Chevrolet, a General Motors dealership, to have the recall work performed. The mechanic who performed the recall work disposed of the replaced parts in accordance with specific General Motors directives.

In the motion for summary judgment filed by General Motors, it asserted a lack of sufficient evidence to support plaintiff's claim and also that Louisiana law requires expert testimony to prove a defect in a products liability case.

Contained within the defendant's exhibits were excerpts from Mr. Wiley's deposition testimony in which he testified that his seat belt came unlatched and he hit his knee on the dashboard upon impact when he was thrown into the passenger's seat. Also within the defendant's exhibits were excerpts from testimony of John Morris, who testified he performed recall work on the vehicle in question for a defect in the seat belt latching mechanism. The District Court ruled without written reasons granting General Motors' motion.

Within ten days of the judgment, Mr. Wiley filed a motion for reconsideration, which was treated as a motion for new trial. Mr. Wiley proffered testimony from his treating physician that his injuries were consistent with his explanation of how the injuries occurred. Additionally, Mr. Wiley offered evidence that the recall was for "sensitive latch disengagement" and "intermittent ability of the seat belt to latch". The District Court denied Mr. Wiley's motion after applying a four prong test it adopted from *Lavespere v. Niagara Mach. & Tool Works, Inc.*, 910 F.2d 167 (5th Cir. 1990). The District Court also noted that after considering the proffered evidence, it would still grant the motion for summary judgment, noting: "The recall petition and the

deposition of a non-expert are not sufficient to overcome the defendant's motion for summary judgment."

The Fifth Circuit ruled that summary judgment in favor of the defendant was proper. The Fifth Circuit relied upon what it perceived to be a lack of evidence that the recall was related to the unlatching of the belt at the time of the accident. In particular, in footnote 5 of its opinion, that Court indicated that according to the deposition testimony of Mr. Morris, a GM employee, the recall notice was for a failure of the seatbelt to disengage. The Court also found that this evidence was not rebutted. However, the Fifth Circuit, and the District Court before it, failed to consider material evidence that was presented to the District Court, including discovery responses by GM, which established that the recall campaign was at least in part for a "sensitive latch disengagement" and an "intermittent ability of the buckle to latch".

Argument

I. The writ should be granted in this matter as the decisions of the Courts below are in direct conflict with this Court's decisions in *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986) and *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159, 90 S.Ct. 1598, 1609, 26 L.Ed.2d 142 (1970) and have resulted in a substantial miscarriage of justice

Under Fed.R.Civ.P. 56(c), summary judgment is not appropriate unless under the evidence submitted with the motion, that "there is no genuine issue as to any material fact" and the movant is "entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). Unless and until the moving party meets this burden, the non-moving party is not required to submit any evidence in opposition to the motion. *Celotex*, 477 U.S. at 325, 106 S.Ct. at 2554; *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159, 90 S.Ct. 1598, 1609, 26 L.Ed.2d 142 (1970). A party seeking summary judgment always bears the initial responsibility of informing the District Court of the basis for its motion, and identifying those portions of the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," which it believes demonstrate the absence of a

genuine issue of material fact. *Celotex*, 477 U.S. at 323, 106 S.Ct. at 2553. This initial burden remains with the moving party even when the issue involved is one on which the non-movant will bear the burden of proof at trial. *Celotex*, 477 U.S. at 324, 106 S.Ct. at 2554.

The District Court and the Court of Appeals, in its affirmance, did not apply these well-accepted mandates of this Court. Instead, summary judgment was granted and affirmed even though there were disputes as to material facts (even prior to any opposition by the plaintiff) and the defendant was not entitled to a judgment as a matter of law.[1] This error resulted in a

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[1]As has been recognized by the Court of Appeal below in other contexts, a motion for summary judgment cannot be granted simply because there is no opposition, even if failure to oppose violated a local rule. *Hibernia National Bank v. Administration Central Sociedad Anonima*, 776 F.2d 1277 (5th Cir. 1985). "The movant has the burden of establishing the absence of a genuine issue of material fact and, unless he has done so, the court may not grant the motion, regardless of whether any response was filed." *Hetzel v. Bethelehem Steel Corp.*, 50 F.3d 360, 367 (5th Cir. 1995).

misapplication of the applicable law to the claim, the Louisiana Products Liability Act (hereinafter LPLA). La. R.S. 9:2800.51 *et seq*.

The Courts below apparently accepted the contention of the defendant that plaintiff could not prevail on his claims that the seat belt failed causing him enhanced injuries because he had not retained an expert. Despite claims to the contrary by the defendant below and the apparent acceptance by the Courts below, Louisiana law does not require an expert in order for the plaintiff to prevail on a product liability claim.

In *Traut v. Uniroyal, Inc*, 555 So.2d 655 (La. App. 4th Cir. 1989), the Court recognized that after the occurrence of an unusual event a defect may be inferred solely from the fact the accident occurred. *Traut*, 555 So.2d at 656. The failure of a seat belt mechanism is an unusual occurrence from which such a defect can be inferred. In addition to the unusual occurrence, at the time of the filing of the defendant's motion, the record established the evidence of the recall and the testimony of Mr. Wiley that the seat belt failed.

In determining the propriety of a motion for summary judgment all justifiable inferences are to be drawn in the favor of the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Under Anderson's mandate to favor the non-

moving party with reasonable inferences and the allocation of burdens, no expert was necessary in this case. This principal was recognized by the United States District Court for the Middle District of Louisiana in *Doster v. Delta Beverage Group, Inc.*, 1993 U.S. Dist. Lexis 11550, which held that a Louisiana products liability plaintiff is not required to use expert testimony.

II. The writ should be granted as the proceedings below so far departed from the accepted and usual course of judicial proceedings, in that the Courts below ignored material facts that made summary judgment inappropriate, as to call for the exercise of this Court's supervisory power

In its ruling on Mr. Wiley's motion for reconsideration, the District Court stated:

> [A]fter considering the proffered evidence, the Court would still grant the defendant's motion for summary judgment. The recall petition and the deposition of a non-expert are not sufficient to overcome the defendant's motion for summary judgment.

The Court of Appeals found that as a matter of law the recall notice and other evidence did not establish that the recall was related to the disengagement that caused plaintiff's injuries. At

footnote 5 of that opinion, the Court stated:

> The fact that the seat belt latching mechanism had been recalled provides no evidence of defect in this case. According to deposition testimony, the recall was for the specific problems of the seat belt not engaging at all and its occasional failure to disengage. According to this deposition testimony, which was not rebutted by any evidence presented by Wiley, and problem that the recall sought to address was easily detectable by the user because "he would know instantly if the seat belt didn't latch." Wiley testified that he had no problem properly buckling the belt prior to the accident.

These rulings are clear misconstructions of the law and evidence to this case. Most significantly, the rulings by the Courts below, ignored the expert evidence submitted by plaintiff from the mouths of the defendant's own employees. Pursuant to a discovery request by the complainant, defendant provided documents that established that at least a part of the reason for a recall campaign was "sensitive latch disengagement" and an "intermittent ability of the buckle to latch".[2] This is in stark contrast to the findings below

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[2]This evidence was presented to both the District Court and (continued...)

that the recall was "for the specific problems of the seat belt not engaging at all and its occasional failure to disengage". In light of these problems demonstrated by GM's own testing and experts, and Mr. Wiley's testimony that the seat belt came unlatched, there was sufficient evidence before the District Court for a jury to find, by a preponderance of the evidence, that a defect in the seat belt existed at the time the automobile left the manufacturer and the defect caused the injury of which the plaintiff complained. To have granted and affirmed summary judgment without even addressing this critical and material fact, so far departed from the accepted and usual course of judicial proceedings to call for the exercise of this Court's supervisory power.

The Courts below also ignored Mr. Wiley's testimony that the seat belt came unlatched, that he found himself in the passenger seat upon regaining consciousness, and that he struck his knee under the dashboard when the seat belt disengaged during the accident. Finally, they ignored the testimony as to causation provided by the treating orthopedist, Dr. Robicheaux, who testified that the most likely cause of the injuries received by Mr. Wiley was the accident described by Mr. Wiley when his seat belt came undone and he struck his leg.

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[2](...continued)
the Court of Appeals prior to the final rulings in this matter.

In so ruling, the District Court (and the Court of Appeals in affirming) ignored substantial evidence which rendered the grant of summary judgment inappropriate. As set out above, this evidence at least established a dispute as to whether the recall was related to the disengagement problem related by the plaintiff. To grant summary judgment when such a dispute exists is not only an error of law but is such a substantial departure from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's supervisory power.

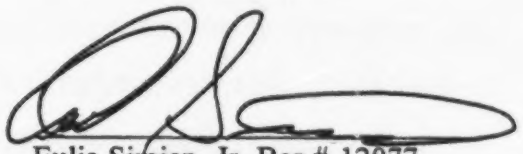
Conclusion

The Courts below erred in granting and affirming summary judgment in favor of the defendant. There was material evidence before those Courts, contained in the defendant's own exhibits to make summary judgment appropriate. Further, the additional facts presented by the plaintiff (the GM discovery responses, testimony by Dr. Robiceaux, and the plaintiff's testimony) established additional disputes as to material facts and that the defendant was not entitled to a summary judgment. To have so granted the defendant's motion is in contravention of this Court's mandates in *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986) and *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159, 90 S.Ct. 1598, 1609, 26 L.Ed.2d 142 (1970) and so far departed from the accepted and usual course of judicial proceedings

to call for the exercise of this Court's supervisory power.

Wherefore, plaintiff prays that this Honorable Court grant a writ of certiorari to review the decision by the Fifth Circuit affirming the grant of summary judgment to defendant.

Respectfully Submitted:



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Appendix A -- Ruling on Defendant's Motion
for Summary Judgment

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CHARLES E. WILEY **CIVIL ACTION**

VERSUS **94-48**

GENERAL MOTORS CORPORATION

RULING ON THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on the defendant's motion for summary judgment. The plaintiff has filed no opposition to the motion. Therefore, because the defendant has met its burden by pointing out the absence of evidence to support the plaintiff's case, summary judgment is proper at this time.

Therefore:

IT IS ORDERED that the defendant's motion for summary judgment be and it is hereby GRANTED.

Baton Rouge, Louisiana. November 10, 1994.

/s/

FRANK J. POLOZOLA
UNITED STATES DISTRICT JUDGE

Appendix B -- Ruling on Plaintiff's Motion for Reconsideration

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CHARLES E. WILEY CIVIL ACTION

VERSUS 94-48

GENERAL MOTORS CORPORATION

RULING ON PLAINTIFF'S MOTION FOR RECONSIDERATION

This matter is before the Court on a motion for reconsideration filed by the plaintiff, Charles P. Wiley. For the reasons which follow, the motion is denied.

PROCEDURAL HISTORY

This suit was filed against the defendant, General Motors Corporation, for injuries allegedly sustained as a result of a seat belt that malfunctioned during an automobile accident. On October 17, 1994, the defendant filed a motion for summary judgment. After the plaintiff failed to timely oppose the motion, this Court granted the motion for summary judgment on November 10, 1994, and entered a judgment dismissing the suit with prejudice on November 18, 1994. On November 23, 1994, the plaintiff filed a Motion for Reconsideration and Leave to File Opposition.

MOTION FOR RECONSIDERATION

Since final judgment has already been entered in this case,

the plaintiff's motion is procedurally improper. Therefore, under *Lavespere v. Niagara Machine & Tool Works, Inc.*,[1] the motion must be treated as either a Motion to Alter or Amend a Judgment under Rule 59(e) of the Federal Rules of Civil Procedure, or as a Motion for Relief from a Judgment under Rule 60. Because the plaintiff's motion was filed within the ten day period applicable to motions for new trial, *Lavespere* requires that the motion be evaluated under Rule 59(e).[2]

In *Lavespere*, the Fifth Circuit held that "the district court has considerable discretion in deciding whether to reopen a case in response to a motion for reconsideration arising under [Rule 59(e)]."[3] *Lavespere* established a four-prong inquiry which the Court must apply in deciding whether to grant the motion. Specifically, this Court must consider: (1) the reasons for the plaintiff's default; (2) the importance of the omitted evidence to the plaintiff's case; (3) whether the evidence was available to the plaintiff before he responded to the motion for summary judgment; and (4) the likelihood that the defendant will suffer unfair prejudice

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[1]910 F.2d 167 (5th Cir. 1990).

[2]*Lavespere*, 910 F.2d at 173.

[3]*Lavespere*, 910 F.2d at 174.

if the case is reopened.[4]

ANALYSIS

The plaintiff contends he failed to oppose the motion for summary judgment because of an "oversight."[5] Attorney negligence was the reason for the moving party's default in *Lavespere*, a fact which the court felt weight in favor of reopening the case. However, in *Lavespere*, the defaulting party timely oppose the motion for summary judgment, but failed to include a necessary evidentiary attachment. In the case sub judice, no opposition of any kind was made to the motion.

The plaintiff proffers two pieces of evidence with his motion for reconsideration. To support his allegation that the seat belt was defective, he contends he seat belt was the subject of a recall campaign due to the possibility of "sensitive latch disengagement." The plaintiff seeks to have the Court infer that because there was a general recall campaign, this particular seat belt was defective. Under *Lavespere*, the inquiry the court must make is to determine the importance of the omitted evidence of the plaintiff's suit. However, this evidence is not so persuasive as to necessitate reopening this case. It must be noted that one month

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[4]*Lavespere*, 910 F.2d at 174.

[5]Pl.'s Mem. Supp. Recons. at 1.

prior to commencing this suit, the plaintiff, acting pursuant to the recall campaign, brought this automobile to a General Motors mechanic for the purpose of repairing the allegedly defective seat belt. The plaintiff admits that at this time he had already consulted an attorney regarding the possibility of suing the defendant over the seat belt. However, the plaintiff did not ask the mechanic to save any of the old parts, which were subsequently discarded. Thus, the plaintiff failed to preserve the alleged defective parts.

The plaintiff also seeks to rely on the deposition of Dr. Richard E. Robichaux, to show the seat belt was the cause of his injuries. Dr. Robichaux stated that if the automobile accident occurred exactly as the plaintiff contends, it is more likely than not the plaintiff's injuries were caused by the malfunctioning seat belt. But Dr. Robichaux also stated that: (1) he has never been qualified as an expert in biomechanics; (2) he is unfamiliar with the mechanics of this particular accident; and (3) he is not qualified to give an opinion as to whether a properly functioning seat belt would have prevented the plaintiff's injuries. Thus, the evidence tendered by the plaintiff - a recall petition and a deposition from a non-expert - is not sufficient to support the plaintiff's motion to reopen the case.

It is also apparent that the plaintiff possessed the above evidence prior to the time the defendant filed its motion for

summary judgment. Both pieces of evidence were developed during pre-trial discovery, a fact that weights against reopening the case.

The final inquiry that *Levespere* requires is to determine whether the defendant will suffer unfair prejudice if the motion for reconsideration is granted. The Court cannot see any prejudice the defendant will suffer. The defendant was aware of the evidence the plaintiff now relies on. Furthermore, the plaintiff filed his motion for reconsideration on November 23, 1994, just five days after Judgment was entered dismissing the suit with prejudice.

Nevertheless, the *Levespere* inquiry weighs heavily against reopening this case. The plaintiff, apparently due to his attorney's oversight, completely failed to oppose the defendant's motion for summary judgment; furthermore, the proffered evidence was in the plaintiff's possession at the time the defendant filed his motion for summary judgment. The Fifth Circuit in *Lavespere* emphasized that it "would be a mistake to infer from our decision that attorneys practicing in this circuit may now ignore deadlines for the submission of evidence with impunity. Our decision means only that a district court . . . may reopen the case; it does not mean that a district court faces with such circumstances should or must do

so."[6]

Even though the Court has concluded that the plaintiff's motion for reconsideration should be denied, the Court notes in the alternative that after considering the proffered evidence, the Court would still grant the defendant's motion for summary judgment. The recall petition and the deposition of a non-expert are not sufficient to overcome the defendant's motion for summary judgment.

Therefore;

IT IS ORDERED that the plaintiff's motion for reconsideration be treated as a motion for new trial, and that the motion be and it is hereby DENIED.

Judgment shall be entered accordingly.

Baton Rouge, Louisiana. December 18, 1995.

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FRANK J. POLOZOLA
UNITED STATES DISTRICT JUDGE

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[6]*Lavespere*, 910 F.2d at 175 (emphasis in original). See also *Copsey v. Swearingen*, 36 F.3d 1336 (5th Cir. 1994) (denying plaintiff's motion for reconsideration); Edward H. Bohlin Co. v. The Banning Co., 6 F.3d 350 (5th Cir. 1993) (denying plaintiff's motion for reconsideration).

Appendix C -- Judgment of the District Court

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CHARLES E. WILEY **CIVIL**
ACTION

VERSUS **94-48**

GENERAL MOTORS CORPORATION

JUDGMENT

For the written reasons assigned:

IT IS ORDERED AND ADJUDGED that judgment shall be entered DENYING the Plaintiff's Motion for a New Trial.

Baton Rouge, Louisiana, December 22, 1995.

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FRANK J. POLOZOLA
UNITED STATES DISTRICT JUDGE

Appendix D -- Judgment of Court of Appeals

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

NO. 96-30065
(Summary Calendar)

CHARLES P. WILEY,
Plaintiff-Appellant,

versus
GENERAL MOTORS CORPORATION, also known as Chevrolet-GEO, also known as Chevrolet,

Defendant-Appellee.

Appeal from the United States District Court
For the Middle District of Louisiana
(940CV-48-B-M1)

Before Emilio M. Garza, Stewart, and parker, Circuit Judges.

PER CURIAM:[1]

Charles P. Wiley was injured in an automobile accident. Wiley alleges that during the accident, his drivers-side seat belt came unbuckled, causing him more serious injury than he would have suffered had the seat belt operated properly. Some time after

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[1]Pursuant to Local Rule 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Wiley's accident, Wiley's aunt, Eunice White, the owner of the automobile, received a recall notice concerning the possibility of a defective seat belt. Eunice took the automobile to the dealership to have the belt examined. Pursuant to GM's recall plan, the mechanic at the dealership examined the seat belt, found nothing wrong with it, but replaced the latching mechanism as a precautionary measure. The mechanic then disposed of the old parts. Wiley then filed suit against GM in state court, alleging design and manufacturing defects and failure to warn concerning the seat belt mechanisms. GM removed the case to federal court. Wiley and GM engaged in discovery, and GM moved for summary judgment.[2] Wiley failed to respond to GM's motion, and the

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[2]GM's motion for summary judgment pointed to Wiley's failure to adduce any evidence on essential elements of each cause of action he was asserting. Further, GM presented the deposition of the mechanic that examined and replaced the seat belt in question. He stated that after careful examination, he could detect no defect in the seat belt mechanism. GM also presented the deposition of the officer who had investigated the accident. He stated that at the time of the accident Wiley did not inform him of a problem with the seat belt, and that if Wiley had, he would

(continued...)

district court granted GM's motion for summary judgment. Wiley then filed a motion to reconsider, which the district court properly construed as a motion to alter or amend the judgment.[3] After reviewing the motion, the district court declined to grant Wiley's motion. The district court found that Wiley had still failed to present sufficient competent summary judgment evidence to survive GM's motion for summary judgment. Wiley now appeals the district court's order granting summary judgment in favor of GM and denying Wiley's motion to alter or amend the judgment.

We review a district court's denial of a motion to alter or amend judgment for abuse of discretion. *Lavespere v. Niagara Machine & Tool Works, Inc.*, 910 F. 2d 167, 174-75 (5th Cir. 1990), cert. denied, 510 U.S. 859, 114 S. Ct. 171, 126 L. Ed. 2d 131 (1993). We review the district court's grant of summary

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[2](...continued)
have noted it in the accident report.

[3]See *Lavespere v. Niagara Machine & Tool Works, Inc.*, 910 F.2d 167, 173 (5th Cir. 1990) (holding that district courts must treat motions for reconsideration filed within ten days of entry of summary judgment as Fed. R. Civ. P. 59(e) motions to alter or amend judgment), ert. denied, 510 U.S. 859, 114 S. Ct. 171, 126 L. Ed. 2d 131 (1993).

judgment de novo, and draw all reasonable inferences in favor of the nonmoving party. *S.E.C. v. Recile*, 10 F.3d 1093, 1097 (5th Cir. 1993). Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Once the moving party has filed a properly support motion for summary judgment, the non-moving party "may not rest upon the mere allegations of denials in its pleadings, but must instead set forth specific facts showing that there is a genuine issue for trial." *Recile*, 10 F.3d at 1097. In the absence of specific facts, we will not engage in speculation as to whether "the nonmoving party could or would prove the necessary facts." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc).

The sum total of Wiley's competent summary judgment evidence consisted of: (1) Wiley's deposition in which he states that he properly buckled the seat belt, and that it came unlatched during the accident, and (2) the testimony of a physician that his injuries were consistent either with an accident in which someone was not wearing his seat belt, or an accident in which a person's

seat belt came unlatched during the accident.[4] After careful review of the record and relevant law, we hold that the district court did not err in granting summary judgment in favor of GM.[5]

Under Louisiana law, in order to prevail on a claim for manufacturing or design defect, or failure to warn, a plaintiff must present some evidence that the "characteristic of the product that renders it unreasonably dangerous" existed "at the time the product

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[4]The physician admitted that he had no qualifications in the field of biomechanics, and was therefore unqualified to provide any evidence as to whether or not the seat belt failed.

[5]The fact that the seat belt latching mechanism had been recalled provides no evidence of defect in this case. According to deposition testimony, the recall was for the specific problems of the seat belt not engaging at all and its occasional failure to disengage. According to this deposition testimony, which was not rebutted by any evidence presented by Wiley, and problem that the recall sought to address was easily detectable by the user because "he would know instantly if the seat belt didn't latch." Wiley testified that he had no problem properly buckling the belt prior to the accident.

left the control of its manufacturer." LA. REV. STAT. ANN. § 9:2800.54(C). The claimant has the burden of proving that the defect existed at the time it left the manufacturer's control. Id. at § 9:2900.54(D). The automobile was two years old when the accident occurred. Wiley presented absolutely no evidence that the seat belt was defective and unreasonably dangerous when it left GM's control. Wiley's only testimony was that he buckled the seat belt and that the seat belt came unlatched during his accident. There are a myriad of explanations for this phenomenon that do not indicate that the product was defective when it left GM's control.[6] Without evidence that the seat belt was defective at the time it left GM's control, summary judgment is appropriate. See *Scott v. White Trucks*, 699 F.2d 714, 724-25 (5th Cir. 1983) (upholding judgment notwithstanding the verdict on claims of design defect, manufacturing defect, and failure to warn, on the grounds that plaintiff had failed to produce any evidence that product was defective when it left the hands of the defendant).

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[6]The unlatching could have been caused by human error, or a defect that arose in the intervening two years, either from misuse or some other cause. In short, Wiley's testimony does not raise a reasonable inference that a defect existed at the time the product left the control of GM.

In addition, in order to recover for a manufacturing defect, Wiley must present some evidence that at the time the product left GM's control, it "deviated in a material way from the manufacturer's specification for performance standards for the product or from otherwise identical products manufactured by the same manufacturer." La. Rev. Stat. Ann. § 9:2800.55. Wiley has presented no evidence that the seat belt mechanism deviated in any way from either GM's specifications or performance standards.[7] Without such proof, summary judgment is appropriate on this claim. See *Lawrence v. General Motors Corp.*, 73 F. 3d 587, 589 (5th Cir. 1996) (applying same standard applicable in summary judgment cases and reversing jury verdict on the grounds that plaintiff had failed to present any evidence that product deviated from specifications or performance standards).

Further, to recover for a design defect, Wiley must present evidence that "[t]here existed an alternative design for the product that was capable of preventing the claimant's damage," and that

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[7]Indeed, the deposition of the mechanic who performed the recall inspection states that there was nothing wrong with the condition of this particular seat belt. It simply did not exhibit any of the characteristics of the flawed seat belts that were recalled.

"the likelihood that the product's design would cause the claimant's damage and the gravity of that damage outweighed the burden of the manufacturer of adopting such alternative design and the adverse effect, if any, of such alternative design on the utility of the product." La. Rev. Stat. Ann. § 9:2800.56. Wiley has presented no evidence that an alternative design existed for the seat belt which would have prevented his injury nor that such a design would be cost effective for GM o use in its products. Absent such evidence, summary judgment cases and reversing jury verdict on the grounds that plaintiff had failed to present any evidence on the existence of an effective alternative design and its potential cost effectiveness).

In short, as to each cause of action Wiley asserts, he has failed to present any evidence as to at least one element of the claim. In such a case, summary judgment is warranted. See *Pavone v. Mississippi Riverboat Amusement Corp.* , 52 F.3d 560, 565 (5th Cir. 1995) (holding that "to defeat a motion for summary judgment the nonmovant must present evidence sufficient to establish the existence of each element of his claim as to which he will have to burden of proof at trial").[8]

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[8]We also find that the district court did not abuse its discretion in denying Wiley's motion to alter or amend the (continued...)

For the foregoing reasons, we AFFIRM the district court's order granting summary judgment in favor of GM and denying Wiley's motion to alter or amend the judgment.

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[8](...continued)
judgment. See *Lavespere*, 910 F.2d at 173 (setting forth the considerations under which a district court should consider a motion to alter or amend judgment).